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**IN THE  
COURT OF APPEALS OF INDIANA**

MICHAEL ROBERT RAINS,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A05-0603-CR-166

APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause No. 48D03-9812-CF-552 and  
48D03-0106-DF-216

**March 16, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Michael Rains (“Rains”) appeals the trial court’s revocation of his probation and reinstatement of his suspended sentences.

We affirm.

## ISSUE

Whether the trial court abused its discretion when it revoked Rains’ probation and reinstated his suspended sentences of eight (8) and three (3) years, respectively, in causes 48D03-9812-CF-00552 and 48D03-0106-DF-00216, after Rains admittedly violated the terms of his probation.

## FACTS

On December 16, 1998, Rains was charged under cause number 48D03-9812-CF-00552 with driving while suspended, a class A misdemeanor, and with dealing marijuana, a class C felony. He pleaded guilty on May 17, 1999, and on June 14, 1999, was sentenced to serve one year on the driving while suspended charge, and eight years on the dealing in marijuana charge, with the sentences to be served concurrently. Rains was ordered to serve four years executed in the Madison County work release facility, with the remaining four years spent on probation.

On April 18, 2000, the Madison County work release facility filed a petition to terminate Rains’ work release privilege, alleging that he had been arrested for driving with a suspended license. Consequently, on April 25, 2000, the probation department filed a notice of violation of probation. At the evidentiary hearing on January 17, 2001, Rains admitted to violating the terms of the work release program. The trial court

restored Rains to the work release program subject to the previously established conditions.

On May 23, 2001, the Madison County work release center filed a second petition to terminate Rains' work release, alleging that Rains had again left the work release center and failed to return. Two days later, the probation department filed a notice of Violation of Executed/Suspended Sentence. On June 12, 2001, Rains was charged with failure to return to lawful detention under cause number 48D03-0106-DF-00216, as a class D felony. He pleaded guilty to the offense on April 8, 2002, and again admitted to violating the terms of his work release. On May 29, 2002, the trial court sentenced Rains to three years for the offense of failure to return to lawful detention, requiring him to serve six (6) months executed on in-home detention and suspending the two and one-half year balance to probation. The trial court then ordered that Rains serve this new sentence consecutively to his prior eight-year sentence under 49D03-9812-CF-00552.

On September 27, 2002, the probation department filed a third notice of violation of suspended sentence, this time alleging that Rains had failed to pay his \$80.00 work release fee, and had moved without advising the probation department of his new address. Thereafter, a warrant was issued for Rains' arrest on December 2, 2002. Subsequently, the probation department filed two amendments to the notice of violation, alleging that Rains had also committed the following violations: possession of marijuana, hash oil or hashish; failure to timely report to probation; failure to earn his G.E.D.; failure to get a substance abuse evaluation; and failure to maintain employment and to verify employment with the probation department. In addition, the probation department

alleged that Rains had been arrested for resisting law enforcement, as a class A misdemeanor. Apparently, Rains made no contact with the probation department from September 2002 until July 2005.

The court held an evidentiary hearing on August 8, 2005, at which Rains admitted that he committed all but one of the alleged violations. The trial court found that Rains violated his probation. At the sanction hearing on February 27, 2006, the trial court revoked Rains' probation and reinstated his previously suspended sentences, from which order Rains now appeals.

### DECISION

Rains argues that the trial court abused its discretion when it revoked his probation and reinstated his previously suspended sentences, instead of "allowing him to remain on work release and suspending a portion of his sentence as originally ordered." Rains' Br. 6. We review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005). A defendant may not collaterally attack a sentence on appeal from a probation revocation. *Stephens v. State*, 818 N.E.2d 936, 939 (Ind. 2004). However, a defendant "is entitled to dispute on appeal the terms of a sentence ordered to be served in a probation revocation proceeding that differ from those terms originally imposed." *Id.*

Probation is a criminal sanction under which a convicted defendant agrees to accept conditions upon his behavior in lieu of imprisonment. *Jones v. State*, 838 N.E.2d 1146 (Ind. Ct. App. 2005). A trial court is vested with the discretionary authority to fix a

sentence within statutorily prescribed parameters. *Kincaid v. State*, 736 N.E.2d 1257, 1259 (Ind. Ct. App. 2000) (citing *Hurst v. State*, 717 N.E.2d 883, 886 (Ind. Ct. App. 1999)). This authority includes the statutory discretion to suspend and to order probation and establish its terms. *Id.* Probation is a matter of grace and a conditional liberty that is a favor, and not a right. *Davis v. State*, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001). Ultimately, decisions about whether to grant probation and to determine the conditions of probation are within the trial court's sound discretion. *Hurst*, 717 N.E.2d at 886. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Goonen v. State*, 705 N.E.2d 209, 211 (Ind. Ct. App. 1999).

Under Indiana code section 35-38-2-3(g), a court may proceed as follows upon finding that a previously sentenced defendant has violated the terms of his probation.

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g)(3) (emphasis added). Here, Rains openly admitted to violating several terms of his probation. Nevertheless, he argues that the trial court abused its discretion when it ordered that he serve his previously suspended sentences. Rains contends, instead, that “allowing him to remain on work release and suspending a portion of his sentences as originally ordered” would be a more appropriate sanction. Rains’ Br.

6. We disagree, inasmuch as the question is whether the trial court abused its discretion in its order.

After Rains' first probation violation, the trial court showed grace and put him back into the work release program subject to the previously established conditions. When Rains admitted to committing his second probation violation through the commission of a new criminal offense, the court again showed leniency. The trial court sentenced Rains to three years – with six months executed on in-home detention and the remaining two years and six months suspended to probation. However, the trial court did order execution of Rains' previously suspended sentences. It was only after the probation department filed its third violation and amendments thereto, alleging that Rains violated his probation on seven undisputed grounds, that the trial court revoked Rains' probation and ordered executed his previously suspended sentences.

Thus, we find that the trial court did not abuse its discretion when, upon finding that Rains had violated his probation for a third time, it revoked his probation and ordered the execution of the previously suspended sentences, thereby ordering Rains to serve a total of eleven years in the Department of Correction.<sup>1</sup>

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<sup>1</sup> Further, Rains argues that the trial court abused its discretion when it ordered him to serve the balance of his previously suspended sentences, particularly given the non-violent nature of his violations and criminal history. We disagree. Indiana statutory authority permits trial courts, when they revoke a person's probation, to order the execution of the balance of a sentence that was suspended at the time of initial sentencing. Here, four years of Rains' sentence under cause number 48D03-9812-CF-00552 and two and a half-years of his sentence under cause number 48D03-0106-DF-00216 were previously suspended, and later ordered executed after Rains' probation was revoked. Since the trial court ordered Rains to serve a sentence that was authorized by statute, the trial court's order was not excessive. See *Kincaid v. State*, 736 N.E.2d 1257, 1259 (Ind. Ct. App. 2000) (finding no abuse of discretion from a trial court's reinstatement of a previously suspended executed sentence pursuant to Indiana Code section 35-38-2-3(g)(3)).

Affirmed.

BAKER, C.J., and ROBB, J., concur.

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Rains also argues that the trial court abused its discretion when it failed to state its reasons for ordering his sentences to be executed in their entirety. Again, we disagree. *See Bussberg v. State*, 827 N.E.2d 37, 43 (Ind. Ct. App. 2005) (finding no authority to support defendant's assertion that a trial court must explain why it chooses to impose the particular punishment that it does for a probation violation).